

**Staff Report**  
**P-28 - Off-Road Vehicle Use In Unincorporated Areas Of Maricopa County**

**Executive Summary:**

The Phoenix nonattainment area did not meet the PM<sub>10</sub> standard in December, 2006, so a Five Percent Plan for PM<sub>10</sub> was submitted to the Environmental Protection Agency (EPA) in December, 2007 which demonstrated a 5% reduction per year in emissions for this region. The emission inventory developed for this plan includes estimates for PM<sub>10</sub> air pollution generated by the operators of off-highway vehicles (OHV) and from the disturbed land they create during wind events. The County committed to adopting an OHV ordinance to reduce these emissions.

The P-28 ordinance limits the operation of any vehicle on unpaved public or private property in Maricopa County. This P-28 ordinance imposes a penalty to the vehicle operator for violations. A violation of this ordinance is classified as a Class 3 misdemeanor and mandates the vehicle operator attend at least eight but not more than 24-hours of a community restitution course related to the off-highway operation of motor vehicles.

To inform stakeholders of the pending ordinance and to allow for comments, the Maricopa County Air Quality Department (MCAQD) held three public workshops (August 27, 2007, September 26, 2007, and October 18, 2007). The compromises reached from these workshops are incorporated into this ordinance and were adopted by the Maricopa County Board of Supervisors on February 20, 2008. The following sections describe the critical aspects of the ordinance.

**Legal Authority And Structure Of Ordinance:**

Maricopa County Air Quality Department (MCAQD) is authorized to regulate off-road vehicles within the county under A.R.S. § 11-251(43). The P-28 ordinance applies to the unincorporated areas of the county and Senate Bill 1552 required that the incorporated cities within Maricopa County (A.R.S. § 9-500.27) adopt OHV ordinances by March 31, 2008. Senate Bill 1552 also authorized several other complimentary measures for OHV activities.

The purpose of P-28 is not to supersede or overlap the existing Maricopa County fugitive dust rules (Rules 310 and 310.01) that apply to property owners; rather it applies to vehicles operators and closes the loopholes in current dust control programs. The

P-28 ordinance fulfills a commitment made by Maricopa County in the Five Percent Plan for PM<sub>10</sub> as required for EPA.

The statute directs the ordinance to apply to any person operating a vehicle at any time on both public and private unpaved property. In the past, Maricopa County rules/ ordinances applied only to the property owners who had sole responsibility to keep vehicles off unpaved open areas and vacant lots. This ordinance requires that vehicle operators, in addition to the land owners, take responsibility for operation and use of vehicles on unpaved property.

The P-28 ordinance imposes a penalty directly to the vehicle operator for violations. The penalty consists of a Class 3 misdemeanor and mandates the vehicle operator attend at least eight but not more than 24-hours of a community restitution course related to the off-road operation of motor vehicles. As such the ordinance is divided into five sections: (1) purpose and applicability; (2) definitions; (3) restrictions; (4) violations, notices, and penalties; and (5) exemptions.

#### **Public And Private Impact Of Ordinance:**

The ordinance is broad in scope as it applies to any person operating a vehicle within the unincorporated areas of Maricopa County. The ordinance limits the emission of particulate matter (PM<sub>10</sub>) into the ambient air from vehicle use and operations on unpaved public or unpaved private property.

There are two major impacts of this ordinance. First, the individual vehicle operator is responsible in addition to the land owner for vehicle use on unpaved property. Secondly, this ordinance redefines how the vehicle operator determines if a property is open for vehicle use. Frequently, posting signs on property resulted in destruction or vandalism of the signs and then vehicle operators would illegally access the properties. To thwart sign destruction and provide a disincentive to the vehicle operators from operating on unpaved property, a vehicle owner must first determine if a property is open. Vehicle operators may find the status of land use in an order from a government land management agency, a current map approved by such agency, or from a government land management virtual posting.

This ordinance will have limited adverse economic impacts but will provide benefits for property owners, because the landowners will be less likely to have to spend money to repair damage to their property from vehicle activity. The landowners will see a savings because of the decrease in the destruction, vandalism, and the replacement of

property signs as well as less disturbance/damage to the property. The additional government inspection and judicial costs will be offset by a reduction in burdens on community health care due to the decrease in particulate matter emissions into the air. This decreased burden of community health care costs helps offset increased agency costs and are expressed as avoided cases of PM<sub>10</sub>-related health effects.

The only economic impact will be revenue generated from violators of the P-28 ordinance who will have to pay a monetary fine through the civil penalty structure. The civil penalty structure included in the ordinance is designed to be similar to penalty structures found in existing MCAQD ordinances, which could be either or both a fine or a order from a judge to perform at least eight but not more than 24-hours of a community restitution course related to the off-road operation of motor vehicles.

#### **PM<sub>10</sub> Reductions And Health Impacts Of The Ordinance:**

Maricopa County estimates that off-road recreational vehicles traveling on unpaved surfaces produce 2,159 tons of PM<sub>10</sub> annually in the PM<sub>10</sub> nonattainment area (MCAQD 2005 Periodic Emissions Inventory for PM<sub>10</sub>, May, 2007). This represents approximately 2.6% of all PM<sub>10</sub> emissions in the nonattainment area. P-28 reduces emissions in two ways: (1) by prohibiting or limiting trespass trips on unstable surfaces, this results in less material that can become “re-entrained” by vehicles driving over the debris, causing the debris to become airborne PM<sub>10</sub> emissions; and (2) by prohibiting or limiting vehicle use on unpaved property, there is less PM<sub>10</sub> disturbed areas on the lots to produce emissions. Reductions of PM<sub>10</sub> emissions will help to improve public health, as recent literature shows that exposure to elevated PM<sub>10</sub> levels can cause increased occurrences of asthma and limit circulation functions (Lin et. al., 2002; Gent et. al., 2003).

#### **Public Comment And Participation:**

As mentioned earlier, MCAQD held three public workshops (August 27, 2007, September 26, 2007, and October 18, 2007) to solicit stakeholder comments on the P-28 ordinance. The main categories in which public comment and discussion were focused included: (1) definition of a road or highway; (2) how the vehicle user obtains permission for vehicle access on property; and (3) exemptions from the ordinance.

Regarding category (1), Stakeholders expressed the following concerns: clarify where designated and open trails fall, address service roads, and address private roads.

In response to those concerns, the MCAQD reviewed state statutes, the Code of Federal Regulations, and the Maricopa County Zoning Ordinance, consulted with a group of public and trust Land Managers and developed the following language to supplement the definition of road or highway that the MCAQD initially proposed: “For the purposes of this definition the term “road or highway” also includes designated or opened trail systems, service roads regardless of surface composition, and any other property dedicated or otherwise reserved for public or private street uses, as evidenced by a recorded document, or having thereon a public easement for such use.”

Regarding category (2), P-28 provides the vehicle operator several options to become informed of land use. The vehicle operator can look for a sign on the property posting the land open. The vehicle operator can look for an order, map, or virtual posting from a government land management agency or can obtain written permission from a private land owner. The vehicle operator will also have access to a forthcoming website about land availability for vehicle use. The responsibility for this website, data sharing, access and maintenance requirements still need to be defined.

Regarding category (3), the MCAQD has included an exemption from the ordinance (restricting the operation of any vehicle on unpaved property) for operations directed by utilities for operations, distribution, and transmission systems. Utilities use vehicles on unpaved property to perform maintenance and inspections of utility lines/systems. Oftentimes, permission or proof of authority to access such unpaved property is granted via an implied or expressed easement; written permission from the property owner is not always available. Consequently, utilities are exempt from P-28.

After addressing these comments and after following the rulemaking process, P-28 was approved and adoption by the Board Of Supervisors on February 20, 2008.

#### **References:**

Lin, M., Chen, Y., Burnett, R. T., Villeneuve, P. J., & Krewski, D. (2002). The influence of ambient coarse particulate matter on asthma hospitalization in children: Case-crossover and time-series analyses. *Environmental health perspectives*, 110(6), 575-581.

Maricopa County Air Quality Department (MCAQD). (2007). 2005 Periodic Emissions Inventory for PM10 for the Maricopa County, Arizona, Nonattainment Area